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Business Administration

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LAND REGISTRATION

BY

CASSIUS B. CONRAD

THESIS

FOR THE

DEGREE OF BACHELOR OF ARTS

IN

BUSINESS ADMINISTRATION

COLLEGE OF LITERATURE AND ARTS

UNIVERSITY OF ILLINOIS

1913

1913
C76

UNIVERSITY OF ILLINOIS

May 30 , 1913. 190

THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

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IS APPROVED BY ME AS FULFILLING THIS PART OF THE REQUIREMENTS FOR THE

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LAND REGISTRATION

INTRODUCTION.

The cumbersome methods now in vogue for transferring title to land will not last forever. Strenuous business such as has developed in the last few years demands that a quicker, more ready, yet secure, means of real property transfer be adopted by legislation, custom, enactment, or establishment of a new institution.

The question of real property transfer, which is secured by some means of land registration, is timely, because there are at least two systems which opposite in nature are now struggling against each other. They are the Torrens system, and the recording system, from which follows the abstract of title business. These two systems cannot exist side by side permanently. The Torrens system, which is the younger, will either die out, or put the other out of business.

It is the purpose of this paper to give a general view of the entire subject of land registration. This necessitates the treatment of abstracting, title insurance and the Torrens system of land registration.

There is a crying need for simplicity, and improvement, which means a reform, in the system of land transfer. It is bound to come, but the changing of such a long and time honored institution must be gradual, and thoroughly worked out, and again it may not be a change, it may be a substitution, with great stress laid on the betterment of the present system.

The Bar Association, Abstractors Associations, Chambers of Commerce, Title Associations, Legislatures, Commissions, and students have and are discussing the situation, and arguing in many ways, so that the subject is a present one, and one which will be settled within the course of this generation.

Advocates of the Torrens system characterize the recording system as intolerable. This is a strong statement, but partially just. Whether the Torrens laws now enacted in several States, will furnish the escape from present embarrassments, is an open question, and remains to be seen.

Advocates of the present system are all strong for an improvement, and they hold out various ways. They have substituted the title insurance business, which, still young, bids fair to enjoy remarkable growth, and to fit in, and to satisfy a need.

In General

In commercial law uniformity is very desirable. There are four distinct systems of law in the United States, which are as follows: State statutes; common law as construed by the State courts; Federal statutes; common law as construed by the Federal courts. This paper deals with the first two.

There are four well-known methods of transferring land. They are; by deed; by descent; by will; and by judicial process. From this it is easy to see the complications which often arise. Uniformity in State laws is sadly lacking, although in recent years there has been a decided tendency to have State laws more uniform. And above all, uniform laws are desirable in the governing of transfer of real property. Why? Because, (1), an

owner of land in one State may reside in another, the State laws differ, he has the added expense of almost being compelled to hire a foreign lawyer; (2), the execution of documents differ, and cause great inconvenience, and possibly serious complications, giving cause for many petty liens; (3), acknowledgment of instruments and questions concerning the validity of will are common examples of radical differences which exist in the many State laws. This is especially true of wills, and the lack of uniformity is painfully apparent. There are many other reasons.

True, the country has prospered under these different and diverse laws, but it is not because of the diversity, rather, it is in spite of it.

There are two, well defined, systems of land transfer, the Title Deeds system, and the Recording System. The Title Deeds system is the first and oldest. Transfer of title was effected by the production and delivery of all title deeds to the land in question, and no public record was kept. It is obvious that this system is now impossible and impracticable. The only place that it was ever used, where, in fact, it still is used to a small degree, was in England, and a few places in Europe. But in those cases the title usually passed from father to son, and it was not difficult to trace.

We are all familiar with the Recording system. Transfer is effected by the notarial execution of instruments, and their filing at a public registry. The system is in use in France, Holland, Italy, part of Switzerland, and other countries in Europe. It has been in use in the United States since the organ-

ization of its government.

In the United States every act of the state legislature must be in harmony with the federal and state constitution. All constitutional powers of government are divided into the three departments of legislative, judicial and executive. No person or collection of persons of one department can properly exercise power belonging to another department. A commissioner or register of titles is an executive officer and may not exercise any judicial power to determine or establish titles. This has been a stumbling block for the Torrens system advocates.

The transfer of land in Illinois is carried on at present in the following way. The Clerk of the Circuit Court is also the Recorder of Deeds, except in populous counties. In these counties a separate county official is elected. The Clerk has the power to appoint deputy clerks, who are able to take care of the recording. Upon presentment for public record the Clerk is supposed to look over the instrument, to note serious mistakes, and insist that they be corrected before he accepts. But this is seldom done. The only reason, in most cases that the Clerk looks at the instrument is to ascertain the charge for recording. Many bad land descriptions, and incorrect acknowledgments become a part of the records because of the officials carelessness.

The Recorder files the instrument by making a record in the Entry Book, briefly stating the parties, consideration, description, etc. On the back of the instrument he places the time of filing, the book and page, and his signature, as Recorder of Deeds, or Clerk of the Circuit Court, or both. After a few days, in which the office has had time to record the instrument in full and

to compare their record with the original, the original is returned to the owner. In most offices pay for recording is demanded on presentment of the instrument. Fees vary in different counties, but in all of them they have a uniform price for each kind of instrument, but said price often differs in accordance with the length of the instrument. The most characteristic thing about deed registry in the United States is that this office and its contents are open to the public in all cases of reasonable demand.

Abstracts of Title

Out of this publicity has grown the abstract of title business, a private profession. Many people have erroneous ideas concerning the abstract business. A good majority believe that it is a public business, bordering on graft, and at least connected in some way with the county officials. A short generalization on abstracting will clear this.

An abstract of title is in brief history of the land in question, showing briefly the various steps by which the property came into possession of the holder. Abstracting is the practice of compiling, as proof of ownership, a history of the property conveyed. The abstracter must have access each day to the instruments which are filed in the office of the Recorder of Deeds at the County Court House. It is in this connection that most people are led astray and believe that the abstractor is a public official.

Abstracting in the State of Illinois commenced in a few counties about 1850. Laws now regulate the legal and medical

professions against the incompetent and do not allow them to practice, but any legislation of that character has been lacking with the abstract profession. Very little progress has been made in abstracting, that is in the methods which were first used or demanded when abstracts were first created. The general public knows very little about an abstract of title, but nearly every person has something to do with the subject at some time or other in his lifetime.

Mr. Warvelle says in his work on Abstracting:

"The business of furnishing abstracts of title has grown to enormous proportions, calling for a class of highly skilled conveyancers with special training and qualifications for the work, while the examination of titles has almost created a new department of law."

"The making of a perfect abstract of title to a piece of land involves a great exercise of legal learning and careful research, and the person preparing it must fully understand all the laws and be specially educated for the duties of his vocation so that from his possessed knowledge and skill he will use due and ordinary care in the performance of his duties."

The work of the abstracter and lawyer are closely connected. The abstracter should prepare his abstract so that it will show all of the material facts pertaining to the title which the records disclose. Farther than that he cannot very well go, altho he may be instrumental in gaining outside information by way of affidavit, or securing a lost deed, so that the title from the records will appear clear. After the abstracter has finished his work, it falls to the lawyer to examine and apply the law to the

facts.

The abstracter must present his history so that the lawyer examining it will have before him all data necessary to pass upon the legal sufficiency of the title for the protection of his client. This raises the question of merchantable abstracts. A Supreme Court decision in the State of Illinois defines a merchantable abstract as one which passes current as reliable and properly prepared among those buying and selling real estate and having occasion to examine and pass upon titles. Now before legal examiners attempt to pass upon a title they first must have confidence in the abstracter and must be satisfied that the firm is competent, and that their work is reliable. R. W. Boddinhouse, Chief Examiner of the Chicago Title and Trust Company, says, "Ability, reliability and responsibility are the three great characteristics which go to determine the merchantability of abstracts".

As to the standing and character of an abstracter of titles in the community, the supreme court of Illinois said in a noted case: "Persons engaged in the business of making abstracts of title occupy a relation of confidence toward those employing them, second only in the sacredness of its nature to that between an attorney and his client, and should be held to a strict responsibility in the exercise of the trust and confidence reposed in them, and any abuse of such trust and confidence should receive an emphatic rebuke".

From this one can see that the abstracter is something more than a mere business man, and his business is by nature a private, commercial business with a strong fiduciary element

attached. In fact, his work is one of long study, of continual study, and of such a nature that it is not hard to call the business of making abstracts a profession.

A proper abstract should show, in the caption, a correct description of the land in question. It should be a complete legal description of the land intended to be conveyed. Following should be the conveyances of record, and the court proceedings, if any. These proceedings should be shown in amount so that the examiner may have before him sufficient information to enable him to pass upon the legal effect intelligently without having to search the original files. A plat should accompany the abstract. The certificate is nothing more than the warranty of the maker that he has searched the records, and that the abstract contains all of record, that there are no judgments, tax sales, mechanics liens, etc, except as therein shown.

The field for improvement in the abstract business is large. Much has been done in that line in recent years. Many State Associations have been formed, culminating in national organization, and by their concerted efforts uniformity has been introduced to a larger degree than previously. There are now pending, and meeting with some approval suggestions as to how to improve abstracting, and they will be treated in the conclusion.

Fault is found with abstracts, not the abstracts themselves so much, as with the means and ways. They fail to satisfy in some cases for one of the three following reasons.

First,- The Purchaser may wish to culminate a deal in a day or so, or one may wish to mortgage his property, and it is necessary to obtain an abstract and an opinion of title by a lawyer.

This takes time, and the deal may fall thru because of the lapse of time. Or, there may be trouble over the opinion of certain lawyers. One may make an objection to perfect title that another would overlook or not consider of importance, and in consequence, there frequently arise disagreements which serve to retard the closing of a real estate deal, or even spoil the sale, or prevent the making of a loan, although the title may be good and marketable.

Second,- The uncertainty as to how courts may determine questions of jurisdiction, or construe provisions of wills, or matters arising from proceedings, or whether or not courts will adhere in the future to principles declared in previous cases, all these uncertain elements tend to make the purchaser or mortgagee dubious. But in reality these cases are very few. In most cases an abstract is deemed essential and amply sufficient when accompanied by a legal opinion of title.

Third,- The abstract shows only matters as they appear of record, and the abstracter cannot certify to matters which do not appear of record. The opinion of title is based on the contents of the abstract. In case of forgery, non delivery or many other technical questions, blame or liability could not be attached to either the abstract maker or the examiner.

As stated before, these cases are few, and the abstract is usually satisfactory evidence of title when approved by an expert opinion, but this element of uncertainty, and the demands of strenuous business have given rise to a form of business that is in a way a substitute for abstracts, yet owing part of its rise to security and reduction of risk. It is title insurance.

Title Insurance

Up to the present time title insurance has only been developed to a point where it is practical in communities of a large population, where property values are high and steadily growing, and with this, increasing risk.

The history of title insurance is similar to life and fire insurance. Time was when title insurance like fire and life was considered an unnecessary expense. The comparison is the same. True, few houses burn and not many titles prove bad, but who knows, your home may be the next to burn, or your title may be the next one to prove absolutely worthless.

Title insurance has become immensely popular in the large cities. The March 1913 number of Real Estate News estimated that in Seattle 50 per cent of the transfers of real estate were on guaranteed policies, in Los Angeles 30 per cent. Large corporations and extensive land holders are using this form of security. The recent Union station located in Kansas City made the purchase of over five million dollars worth of real estate necessary, and not a foot of the ground was bought until the title for the same had been guaranteed by title insurance.

Mr. A. R. Mariott, vice-president of the Chicago Title and Trust Company, the largest organization of its kind in the world, said to the writer, "the work of the abstract department forms the major source of revenue. However, our title insurance department, although only twelve years old, does more business than any other similar corporation. Of course, we conduct the only title guarantee business in the city, while in New York there are two companies, in staid old Boston the lawyers do a

good share of the abstract business and passing on titles, and insurance is seldom employed, in Philadelphia there are three companies, and in many of the larger cities no corporation has attempted this rapidly growing form of property security. In fact, few firms could be found which have the facilities necessary, and they require a great expenditure of money. The business is growing with alarming rapidity, and soon our quarters will be inadequate. I expect the title insurance business to add a great deal to the American's degree of business efficiency, and to facilitate even faster and more secure transfers of property than we obtain at the present time."

A booklet issued by the Chicago Title and Trust Company defines a guarantee policy as a binding agreement, under which the Company agrees to defend, at its own expense, all litigation directed against the title insured by it, and if attacked successfully, it will pay the parties guaranteed, the amount of the loss up to the full sum insured for.

The guarantee policy or certificate is the modern form of title insurance. It affords complete and lasting protection direct to the customer, who, by the payment of one fee, and notice that, as there are no premiums, secures a written promise, backed by the entire resources of the company, against any defect or error of law or of fact.

The protection gained by an abstract and an attorney's opinion is more imaginary than real. This is true in some cases even though the abstract was made by the most efficient company, and examined by a most eminent counsel. Very few men purchase land expecting to hold it forever, they expect to sell in case

of a good offer, and then to have protection for their investment, besides proof of title. He is entitled to the best form of assurance that can be given him. This is in the form of a contract, and not a mere opinion. In the case of foreign investors they do not know the standing of the local abstract company nor that of the foreign legal advise which they almost essentially must hire.

This contract is a contract of indemnity. An example of this form of contract is a simple statement and reads similar to the following:

By This Policy of Insurance

The Progressive Abstract & Guaranty Company, in consideration of the sum of \$25 to it in hand paid, hereby insures John Homes against all loss or damage, not exceeding \$3,000, which the said insured party shall sustain by reason of defects in the title of the insured party to the real estate described in Schedule. A hereto annexed, or by reason of liens or incumbrances affecting the same, at the date hereof, excepting only such liens and other matters as are set forth in Schedule B hereunto annexed, and subject to the conditions hereunto annexed and made part of this policy.

This policy is issued upon Application No. 1217, which shall be held as a warranty of the facts therein stated.

(Date) May 1, 1913.

(Signed) Progressive Abstracter & Guaranty Co.

By Lee C. Gataway, President.

(Corporate Seal)

Attest:

C. E. L. Ambert, Secretary.

Schedule A gives the legal description of the real estate

insured.

Schedule B names any liens, tax charges, etc., excepted.

Under the guarantee system, there is only one fee or premium which pays for the entire service. The cost of an abstract depends on the number of transfers. The price paid for insurance is in proportion to the value of the property insured, the amount of risk assumed by the company, and the protection given to the purchaser. Charges on simple titles usually run about \$10 for the first \$1,000 value and from \$2.50 to \$5.00 for each additional \$1,000.

Because of more complicated title conditions the price schedule of the Chicago Title and Trust Company of Chicago is higher, yet even their rates are lower than those of the companies in New York City. The Chicago schedule is as follows:

			Mortgage Policies	Owner's Policies
	\$	500 or less	\$15.00	\$20.00
Over		500 to include 600	16.00	22.00
"		600 to include 700	17.00	24.00
"		700 to include 800	18.00	26.00
"		800 to include 900	19.00	28.00
"		900 to include 1,000	20.00	30.00
"		1,000 to include 2,000	24.00	35.00
"		2,000 to include 3,000	28.00	40.00
"		3,000 to include 4,000	32.00	45.00
"		4,000 to include 5,000	35.00	50.00
"		5,000 to include 6,000	38.00	55.00
"		6,000 to include 7,000	41.00	60.00
"		7,000 to include 8,000	44.00	65.00
"		8,000 to include 9,000	47.00	70.00
"		9,000 to include 10,000	50.00	75.00

For each additional thousand or fraction thereof over and above \$10,000, add \$2.50 for mortgage policies and \$3.00 for owner's policies.

The foregoing schedule of rates covers title as exists only at date of application. If it is desired to have the searches continued to cover a later date, an additional charge will be made.

This schedule pertains to land in Cook County, altho the company does not confine its business to that aera alone, but will insure titles to property located anywhere in the United States.

The rate schedules of title guarantee companies have changed with the changes in the scope of their business, their broadening, their increasing popularity, and their additonal risk. There is illustrated in a report of the Title Guarantee company trustees, which in part is as follows:

"When we started we had only a theoretical knowledge in the guaranteeing of titles, and still a great deal to learn. Each year of the twenty-five has represented some advance in solving the numerous and complicated problems that have presented themselves. On the contrary there are something more than twenty-five years of additional records, and each year's legislation and court decisions have thrown some additional burden on real estate that has increased the difficulties and dangers in title examination."

The title insurance business does not conflict with the abstract business. On the other hand, it works with it, and takes up the deal after the abstracter is helpless to carry it along any farther. Legally qualified abstracters and title insurance go together, and make a very efficient title system.* Private title insurance companies are the development of our own laws, of our necessities, of our own ideas of independence and individual effort founded on proper economic grounds, and are not supported at public expense. They do not interfere with a single

* Advertising phrase, the author unknown.

custom, tradition or policy of law."

A number of advantages of the policy can be cited by noting instances of title which do not show in an abstract of title. Some of these are, undisclosed possession, insanity, obtaining money under false pretenses, unknown heirs and devisees, improper delivery, deed of a married woman under eighteen, forged deed, an unrecorded contract, forged release, antenuptial agreement, forged notes, improper delivery of deed, deed in escrow, proof of heirship, when deed passes no title, inheritance tax, when probate of will is not conclusive, false statements in deed, wrongful insertion of name in deed, fraud in procuring and delivering deed. These are just a few cases in which the holder of a policy would be protected against such proceedings. Litigation might arise over questions as to who are the heirs of a decedent, whether a party representing himself as single has a wife, as to debts of decedents, as to identity of parties and so on. An attorney may make a fatal error, but the insurance policy is not dependent upon any one man. In any of the above cases the company, upon attack of the property of the holder of a policy, would bear all the expense of employing counsel to defend, and if it fails in making the defense the holder is handed a check for the face value of the policy.

This guarantee policy makes land as easy to sell or borrow money upon as stocks or bonds. It facilitates sales, and gives absolute protection against loss from a defective title. In short, it guards the innocent purchaser.

A summary of the benefits of the guaranty policy is as

follows:

It makes land as easy to sell or borrow money upon as stocks and bonds.

It facilitates real estate sales and gives absolute protection against any loss from defective titles.

It is a contract to indemnify, and not a mere personal opinion.

It assumes all risk, not only against visible errors, but against things undiscoverable.

It states any exceptions such as mortgage, liens, etc., plainly. It does not leave anything to be inferred.

It is good as long as the company lasts. Its value does not depend upon the financial responsibility of one man, his estate, or his bondsmen.

It does not rely upon the records alone.

It is written only after a most exhaustive search of the record, a careful inquiry into the facts outside the record, and upon the legal opinion of expert counsel.

The data upon which the policy is issued are preserved in fire proof vaults for future reference by the company, the customer or his attorney.

It saves the owner the expense of employing counsel to defend any attack made upon the title.

It relieves the holder of all worry and all anxiety over little details so tedious and unfamiliar to the average man.

It is the cheapest form of insurance, as the premium is not annual but one payment insures for all time.

Its cost is based upon a fixed scale, depending upon the

work done and the amount of risk assumed and not upon capricious fees, and can be generally ascertained in advance.

*"It is a financial product, and unifies the responsibility now divided between your abstractor and my lawyer, combining the functions of both title searcher and legal adviser."

All large cities of the east have guarantee companies, and other than those mentioned are, Cleveland, Louisville, Nashville, Chattanooga, Washington, Atlanta, Birmingham, Memphis, St. Louis, Mobile, Galveston, Dallas, Spokane, Seattle, and San Francisco, who all enjoy the benefits of such companies.

Frederick H. Bartlett of a Large Real Estate Firm.

"When I buy real estate, as I sometimes do, I accept an abstract, but I get a guarantee policy. I also accept a Torrens Certificate, but I get a guarantee policy, and when I sell on an abstract I reserve the right in my contract to cure any and all objections raised to the abstract for title by a guarantee policy.

I welcome the introduction of the guarantee policy. I believe every real estate man realizes in this title insurance at least a speedy remedy for all of the old abstract annoyances. The guarantee policy issued by a strong company with sufficient capital and convertible assets is in my opinion the best possible assurance of good title.

Such companies employ the minds best qualified to pass upon the questions involved in a chain of title and several of such legal minds - not one but several - decide upon the objections

*George Vaughn, President American Association of Title Men.

raised, and unless the defect is a substantial one, and of that they are the best judges, it is waived and a guarantee policy is issued.

Through years of examining titles in the same county governed by the same laws, guarantee companies acquire a knowledge of conditions and valuable unrecorded information that it would be impossible for anyone else to be acquainted with. Year after year they do the same thing through a complete and effective organization. I place their opinion in a class entirely by itself. It appeals to my sense of reasons. I would prefer such an opinion without the feature of the guarantee, than that of anyone else and I would pay more for it.

A guarantee policy is an entirely satisfactory medium of transfer. It is popular and acceptable; it is almost universal in its use; it is safe, thorough, simple and not cumbersome. Why should we consider anything else?"

George Vaughan, President of the American Association of Title Men, says, "No line of business ranks higher in point of security to its stockholders or in usefulness to the general public, than that of guaranteeing land titles. The company which stands behind the titles of any locality, making them as marketable as stocks and bonds, is more than a private enterprise - it is a public benefactor."

The Torrens System.

The Torrens Law has been called a system of conveyancing by book-keeping.* The idea prominent in the author's mind appears to have been similar to this; if title to personal property

* James E. Hogg, "The Australian Torrens System

can be transferred from one person to another by the mere making of an entry in a book by a clerk in a store or office, why cannot the title to land be transferred in the same way?

The system of registering title was originally introduced in Germany in 1722, and afterwards independently worked out in practical form by Sir Robert Torrens for South Australia. The name Torrens has been applied to many land registration acts since that time, although there have been many changes, additions and substitutions to the original. But in all land registration laws there is a similarity in that the ownership of property be shown by a certificate in a book in the public officer's office. The essential principle is that this certificate of title must be conclusive.

As first designed the law contained two chief features which simply expressed were as follows. (1), At the time of transfer of property under this system it was the purpose to determine and indefeasibly fix the title to it in the purchaser by the public registration or entry of it in the public record book kept for that purpose. (2), An indemnity fund was collected from land owners for the purpose of compensating anyone whose property was wrongfully taken from them by mistake in registering under the law.*

Such being the case the direct results of (1) are (a), such a law constitutes the person who makes the entry a judge from whose decision there is no appeal, and (b), it also constitutes his entry an official judgment of final and conclusive authority.

* John T. Kenney.

The results in the case of (2) are (a), it makes the state the guarantor of the acts of the registering officer, and (b), it starts the state in the business of insuring titles

Now the Torrens system as above briefly outlined could never be introduced into the United States in that form, because of our Constitution and the fundamental principle of law which it lays down in saying that no ministerial officer can exercise judicial power. Such is the case when a registrar determines the rightful owner of real estate. So that the Torrens system as it exists under the British rule, where they have no Constitution, and Parliament is supreme, cannot exist in the United States. But various efforts have been made to modify the Torrens idea to conform to American liberty, and theory of government, and such land title registration laws have been drawn so that they fully comply with our constitutional requirements, and are valid in every particular.

But in order to make them so, the advocates of the system have had to resort to court proceedings, and to follow a judicial process, so as to comply with due process of law in determining ownership. Registration acts have been passed in the following States, California, Oregon, Washington, Minnesota, Illinois, Ohio, Massachusetts, New York and Colorado.

These land acts differ materially, according to local conditions. In many places the controversy aroused by these acts has become very bitter, and even to the degree of being a hindrance to prosperity. But before taking up the more local conditions it will help to look at those conditions of land regis-

tration which prevail abroad, and approach the subject historically.

Australia

Briefly the system now in vogue in the colonies in Australia is as follows. The person or persons who are owner or owners in fee simple or believed to be either at law or in equity apply to have the land placed on register. The application can be secured from the proper officer in the public building. These, when filled out are submitted for examination to a lawyer and a conveyancer, who are styled examiners of titles. They report to the registrar on the following questions.

- (1) Is the description definite and clear?
- (2) Is applicant in undisputed possession?
- (3) Is he entitled to the property?
- (4) Can he produce evidence that no one else is in a position to succeed against him in an action for ejectment?

The registrar may do one of three things with the application - (1) register at once, (2) reject, (3) postpone for better and more information.

Of course there is a great deal of technical mechanism about the process, but in the main those are the steps which may occur. At the acceptance of the application by the registrar, he issues a certificate setting forth the nature of the estate of the applicant, which is sufficient to vest the estate indefeasibly in the applicant. This becomes the property of the owner, and a duplicate is bound in the records.

Two special benefits can readily be seen. First, the title being declared indefeasible, no one can raise any adverse claim against it. In the case that owner is proved not to be in right-

ful possession, the rightful owner is deprived of any means of recovery of the property, absolutely. But for the sake of justice a money payment may be made out of a compensation fund. This fund is a regular tax, in that it is laid aside in an amount equal to one fifth of one per cent of the value of the land registered under the Torrens system.

The second benefit is the facility for any future dealings with the registered land. In case of a new sale the transaction may be completed in a very short space of time as a new certificate only need to be issued. In case of partial transfer, it may be so stamped on the original certificate, or upon request a new one may be issued. Mortgages and leases are stamped on the certificate and canceled thereon after payment.

In 1900 the charge for application fee was five shillings and for the certificate one pound. Future dealings after the original cost from five shillings to one pound. In case of an examination of title being necessary or demanded, the charge never amounts to more than one third of one per cent of the value of the land registered.

Victoria, a province of Australia, adopted a new law in 1890 that has a few new features. The Attorney General administers the work of the Titles Office. He is assisted by the Commissioner of Titles, who has extensive powers conferred on him, among them being the right to perform judicial functions. The law provides for a Registrar, an examiner of titles, valuers, surveyors and other officers appointed by the Governor-In-Council. The Commissioner may order a survey of any property for any cause. The law provides for an assurance fund. This

must be paid to the Treasurer of Victoria and is invested in government securities, and is to be used as an indemnity fund in case of recovery for damages. The indemnity fund in all of the Australian plans is nothing more than extra pay demanded for an extra risk.

The general working of the Torrens system in Australia seems to have been satisfactory. It was first adopted in South Australia, followed by Queensland, Tasmania and Victoria in 1860, New South Wales in 1862, New Zealand in 1870, Western Australia in 1874 and is now in use in all of the British colonies of Australia.

Sir Robert Torrens, an Englishman, is given credit for the system as is shown by the name which it bears. He was collector of customs at the port of Adelaide, and founded his plan on experience gained in that position. When made register general of New South Wales he had a chance to put in into force.

His central idea was to put real estate, for the purpose of conveying, on the same basis as personal property. Now Australia was an entirely new country, land values were very slight, the country was unsettled and all titles were without much complication. All these conditions were very favorable to the scheme. The slight value made the likelihood of litigation small. He had unlimited power as a government officer. As one writer has said, he was in about the same position as William the Conqueror when he had the Domesday Book made, which contained the authoritative record of the tenure of lands, and royal approval was necessary for transfer. In all the colonies this system applied only to the land granted by the crown since the system had been

established, but most land holders came under its operation because of the early start, leaving few alienated parcels.

In Australia the field seemed particularly fitted for this plan because of the new country and its early start, because the land was cheap, and the surveys accurate. Also, the titles were of a simple nature, and transfers relatively few, and a special effort was made by the government to have the system understood.

"The great and paramount advantage", says Niblack, "which it had was that there were no written constitutions which limited the power of the parliaments to pass such laws as they pleased with reference to dealings with land". But, it would seem that the law has never been quite right in Australia, because there have been so many changes, amendments and repeals that the result has been no permanence and lessened efficiency.

It is an interesting fact that in Australia at the present time, abstracters are doing a considerable and growing business. Their business has grown only recently, and this goes to show that as the country develops more intensely, complexities of title arise which cannot be taken care of by the Torrens system, and they revert to the deed registry system. In technical cases the Torrens system cannot be relied upon to securely safeguard titles and values.

Whether the originator of the Torrens plan ever changed his views is a mooted question. Nevertheless, it is a fact that, upon his return to England, and during the years he occupied a seat in Parliament he did not advocate an extension of his principles, and altho a large land owner himself he never registered a single item under the registration laws modeled on Australian

experiment and introduced into England by others.

Germany

The laws in Germany date back as far as 1722, but they were partial and not compulsory. In 1891 a law for vesting title in registered owners was passed. This law is compulsory. The country is divided into districts with a local tribunal. The whole district was brought under the law at one time and all owners must apply for registration. In this way boundaries were ascertained, and by proceedings land tax registries were perfected, for the two institutions are closely related, not forcibly but conveniently.

The German system differs from that in use in Australia in the following ways:

- (1) The power of vesting title is conferred by a magistrate chosen from the local tribunal for the district instead of the registrar as in the case in Australia.
- (2) Rectification can be secured in all cases as fraud, error or compulsion, except as against bone fide purchasers for value.
- (3) In Australia the system is public, in Germany it is private and secrecy maintained. But in Austria and Hungary the records are free to inspection.
- (4) There is no compensation fund to provide for accidental errors or recovery as in Australia. It is not needed, because rectification may be obtained, and errors expected to be immaterial where the origin of the property was thoroughly known and registration not conducted by mere recorder of titles but submitted to the approval of a magistrate.

(5) The connection with the land registry of the land cadaster is a distinct feature of the German plan. The cadaster is the land tax register, a map of the several parcels of real estate, their description, value, improvements, etc. It is convenient to have the properties on the registry conform to those on the cadaster. In Prussia the cadaster relates to all particulars, while in Austria the parcels are merely denoted by numbers. On account of this double use of the cadaster it must be accurate and under continual control, so periodical revisions are ordered every ten or fifteen years.

Switzerland

In the Canton of Vaud in Switzerland, a very small province, absolute title is conferred on land. Their system is unique in that registration of titles and accurate cadastral plans work together for the better evidence of the ownership of the land. Both laws were made in the year 1882, and the title books and the land tax registers and maps are both revised periodically, and kept up to date daily by additions until the whole revision takes place. The land is described by numbers on the cadastral plans and both property and physical boundaries given. Registration is compulsory, no right in land being transferable unless the land is first registered. The law is superior to the German system in that registration applies to all points of real property, such as easements, incidental rights and expenses being paid out of an ad valorem tax on sales of land.

Tunis

In Tunis, in 1885, the French Parliament granted a land

registry act. It is not compulsory, application lying with the choice of the owner of the land. The applicant draws three copies of his demand, and delivers them to the register of titles who gives one to the French district magistrate, and one to the local native officer. These copies are publicly advertised for three months, then an official report is made which is publicly displayed for two months. At the end of that time the matter is placed in the hands of a local tribunal, consisting of seven magistrates, three French, three native, and with a French president. They pass on the desirability of registration of that certain property, and if favorably so, recommend to the recorder. The registration is conclusive evidence of the state of the title, and anyone who has been injured by it must resort to the indemnity fund which is raised by a contribution of one per cent of the value of the property registered.

England

Registration in England has had a varied career. In 1862 The Lord Westbury act was passed. Under it any freeholder or a leaseholder for a substantial period could apply for registration of title. The scheme met with little success. In 1868 a Royal Commission was appointed to inquire the causes of failure, and from their report the Lord Cairns Act was passed in 1875. Only 133 titles were ever registered under this act.

Still another, called the English Act was passed in 1897. This made registration compulsory in certain places by order of certain local authorities. This included the whole county of London. The order came into operation gradually, lands being

registered under the act as they were sold, and making it compulsory that no land pass from one to another without its first being registered under this act. In 1903 demands became so imperative for an investigation of the system that the question became a great issue. Those who had favored the Act at the beginning had promised to prove its advantages, and it has been adopted as an experimental measure. Now the people wished to know its success. But not until 1908 did the London county council come forward with a demand for a commission to consider the workings and success of the land transfer act of 1897.

This commission after some delay reported that they refused to recommend an extension of registration of titles as it stands in England, and on the other hand strongly recommended the establishment of deed registries throughout England.

But, due to the variety of opinions of the English people themselves, and the impossibility to gain correct ideas of the actual conditions, it is hard to form an opinion on their system of registration. Also, the customs and laws of the British, the history of their land titles, and their different attitudes and ways of interpreting their laws make a just comparison and summary of land registration impossible.

Several of the provinces of Canada have Torrens Acts. They are all modeled after the Australian and English laws. They differ some in detail and in practical application, but not materially. In general, the majority of evidence appears to be that they have been fairly successful, due to simplicity and good management. This is especially true of Winnepeg, Manitoba.

Philippine Islands

On January 1, 1903, Torrens title registration was instituted in the Philippine Islands under absolute control of the Philippine Commission. The commission's report of 1902, gave a description of the evils of the existing deed registry system and advocated the Torrens system. The Commission set up a court of land registration that was given jurisdiction throughout the Islands and made a court of records with full provision for all necessary examiners of titles.

This would seem an ideal opportunity for the Torrens system. The Commission had absolute power to make and amend the law as it saw fit. It was hampered by no constitutional restrictions, since under the decision of the United States Supreme Court the Federal constitution did not extend to the Philippine Islands. The old records of the previous system were for the most part destroyed in the war, or by the Spanish government before they gave up authority, so that the lands of the island were in a large part taken over by the government.

But in the very next year 1904 the Commission Reports say, "it was deemed inexpedient to continue the jurisdiction of the court of land registration over land situated in the non-Christian provinces". The object of such an order was said to be to prohibit outsiders from cheating ignorant members of the non-Christian tribes out of their holdings. The territory thus excluded comprised about one half that of the islands.

In the report of 1905, one province reports their eight applications and only two acceptances allowed for registration.

It gives as one of the reasons for this slight number, the difficulties of the system. First, because of the comparatively great cost, and second, because when the land is brought up for registration the government is on one side and the owner on the other and the latter finds it necessary to hire expensive counsel to defend himself. Until decided one way or the other the land is in a state of disputed possession.

The report of 1906 continues to be less enthusiastic. It says that in a large number of cases in which the attorney general had entered objection to registration, that persons were attempting to secure large tracts of unoccupied and uncultivated public land to which they had no moral right.

Again, in the report of 1908, under the head of unperfected titles, it is said by the director of lands that large areas of land are being lost to the government through too liberal interpretation of the public land act.

So in the Philippines it can be seen that the registration of titles has fallen down in three places, (1) the non-Christian provinces, (2), as to private owners of small tracts, (3), as to public lands. The later reports show other deficiencies, and finally recommended compulsory registration in the following way. "The governor through an attorney brings suit against the occupants of the land to forfeit it on the ground that they have no registered titles. A judge of the court is in attendance and will hear all claims at once and will issue a decree at the end thus give titles to all the lands". The government offers to the land holders easy payments, so that they may repay their share of the costs, which includes the survey, in five equal annual

installments. This method is unfair and will soon lead to injustice, so that the general opinion for the future of titles in the Philippines seems to be a return to the deed registry.

Now to approach the State laws of our United States. Three states stand out prominently in regard to land registration acts. They are Minnesota, Massachusetts and Illinois. As stated before land registration in the United States is impossible because of constitutional restrictions regarding due process of law and forbidding interfering with contracts and the giving of judicial powers to administrative officers, but the ingenuity of the American lawyers has resulted in the practical perfection of methods for the original registration of titles, by means of an action to quiet title. But most of the acts do retain many features of the Torrens system.

Minnesota

In Minnesota the Law has been in operation for a little over eleven years. For the most part the public cannot be induced to use the system or support it, and some actively oppose it by discriminating against Torrens titles in their investments. In regard to the assurance fund a prominent attorney of St. Paul who does not disclose his name says, "The State merely acts as a trustee for the benefit of any person who, without negligence on his part, is injured by the registration of title, or an omission, mistake or misfeasance on the part of any administrative officer concerned in registration. That such injury must be proved by action, and that if the assurance fund proves insufficient to satisfy any judgment, the unsatisfied portion or balance will bear

interest at six per cent a year until paid from such fund. That the value of the estate at the time of injury determines the limit of recovery, that this action is barred six years from the time of injury - not six years from discovery."

After eleven years of the Torrens system in Ramsey County in which St. Paul is situated the assurance fund contained the sum of \$2,357.64. In Duluth the fund amounts to about \$8,500.00 and in Minneapolis about \$4,000.00

Careful attorneys in Minnesota will not permit a client to accept a Torrens certificate of title until they have made the following examinations, (a) as to registration proceedings, (b), as to Tax and Assessment records, (d) as to Register of Deeds' records, (e) as to all subsequent transactions. A summary of objections to the Minnesota law is as follows,-

First,- It is expensive to the tax payer, as at present operated in the larger counties.

Second,- It involves at much if not more examination to ascertain whether it conveys a good title, than does the old system.

Third,- Except in the case of the simplest transfer methods, as by deed, the procedure is not only more extensive but consumes a much longer time than does the old system.

Fourth,- The assurance fund does not "assure" anyone except the first person deprived wrongfully of his property and may keep him waiting a long time to recompense his loss.

Fifth,- It is a poor field for investors or purchasers at judicial sales,

Sixth,- It can readily be made the instrument of fraud and cause no little litigation and perhaps hardships.

Seventh,- Finally, it is new, its terms are not fixed by adjudication, its meaning in many cases indefinite, and therefore it will be the cause of endless litigation.

Massachusetts

An act of the legislature in Massachusetts in 1897 established a court of land registration for that State. It provides, "for a court of land registration, which shall have exclusive original jurisdiction of all applications for the registration of titles to land within the commonwealth, with power to hear and determine all questions arising upon such applications." This is a further departure from the original Torrens scheme in that it provides not merely for quiet title suit but provides for an entirely new court. This court was changed in name in 1904 from Court of Land Registration to Land Court.

The sittings of the Court are held in Boston, but it has power to adjourn from time to time to other places as public convenience may desire. It has two judges who may hold court singly and different sessions may be held at the same time. The clerk of the court is called the recorder, and the register of deeds in each county is the assistant recorder. The salaries and expenses of the court are paid by the state. The application for registration can be filed with the recorder or with the assistant recorder in the county in which the land is situated. In the latter case the assistant recorder transmits the papers to the court in Boston. After an application has been disposed of by the court, a memorandum is sent by the recorder

to the assistant in the proper county, who records and indexes it with the records of deeds and in the index applications. A certified copy of the decree of registration is sent to the assistant recorder of the proper county, and by him transcribed in the registration book.

This entry is the original certificate of title, and a duplicate of the entry is the owner's certificate. Judge Leonard A. Jones, the first chief judge of this court states in a letter, "that where the land is situated in a county distant to Boston, the notices published and served on all parties in interest state that appearances and answers may be filed with the assistant recorder in the registry of deeds for that county; that if the abstract shows that the petitioner has a clear title and no appearance is entered, the petitioner has no occasion to go to Boston; that all business is conducted by mail; that if evidence is needed to perfect title, or if an appearance has been entered and a hearing is necessary, especially if there are numerous witnesses to be heard, one of the judges goes to the county where the parties and witnesses are, but that generally the lawyers and parties prefer to go to Boston for the hearing."

Clearly it is an advantage to have the Torrens act administered by a special court wherever that may be, but that court should be local, as well as special. The cost in time and money of the initial registration, and the inconvenience of having at a distance the court which administers the act, far outweigh the advantages of a special court, and up to this time no other State has passed a law containing this feature of the Massachusetts law. A bill almost the exact copy, of the Massachusetts law

was introduced in the United States Senate providing for the registration of title to lands in the District of Columbia, but it was not passed. In this case it appears that the law would be adaptable as the court would be both special and local.

In Massachusetts the Land Court is overworked. The judges are very painstaking and examine the details of the titles themselves before giving a degree. The state has attained the most efficient position of the Torrens states in this regard. But the registry offices are not busy. In the city of Boston one day in November 1912 there was only one instrument filed in the registration department, and the average is less than fifteen per day. This includes deeds, mortgages, certified copies, notices and everything connected with the system. This overwork is due to the nature of the work which has been given the court. It is now practically the head of the old system of land titles.

Ohio

In Ohio the registration law was declared to be unconstitutional by the Supreme Court of that State. The law was passed in 1895, and the legislature repealed it in 1898. Recently a constitutional amendment was adopted under which it is hoped that registration of titles may be held valid in Ohio. But this does not relieve the system from the restrictions of the Federal Constitution and amendments.

The language of the Ohio Court in concluding the decision, was, "The general system proposed by this act may have operated where no system of registration previously existed and the conserving influences of constitutions are not enjoyed, it seems,

in its prominent features, to be inapplicable where constitutional provisions, paramount to legislative enactments, protect vested rights and restrict the state to the exercise of functions which are governmental in their nature."

With special reference to the insurance feature the Ohio Supreme Court said, "That this is in no sense a public purpose seems clear. Considering the purposes for which government is instituted and the high conception of individual right which prevailed at the time of the adoption of the constitution it would be strange if authority had been conferred upon the state to carry on the business of an insurer of private titles. No such authority is conferred in any of the terms of the constitution. It is not implied in any of the enumerated purposes for which the government is formed. It is entirely foreign to those purposes."

Other States

In Oregon, New York, Washington, California and Colorado the law is practically a dead letter, and there is very little use made of it or is there very much public agitation in favor. In Denver, Colorado, there has not been an original registration since 1906, and not one paper or transfer for anything else regarding any registered property since July 1912. In Portland, Oregon, there were only three registrations in the whole year of 1912. In New York City there have been nine registrations, two of which have been withdrawn and there has never been a transfer certificate issued. These figures are from the Real Estate News and are reliable to January 1, 1913.

By its Torrens Law statute New York assumes to vest in

the holder of realty an absolutely indefeasible title. Proponents of the law have urged that under the statute a clouded title could be cleared and a defective one cured. Justice Crane of the Supreme Court has dissipated this belief by deducing that bad titles cannot even be registered under the Torrens statute.

Illinois

What we have now in Illinois is not the real Torrens law, but a modification,- a law so constructed as to seemingly conform to the requirements of the Federal Constitution. There have been two Torrens Laws created in the State of Illinois. The first of these was passed in the year 1895. It was modeled after the law in the province of Victoria in Australia which was passed in 1890. Those sections which treated of the registration of the title by the registrar were in effect indetical. Under this law there was no need of Courts and juries as the registrar was Court and jury all in one and he decreed the ownership of property.

This original law was held to be unconstitutional in the case, *People v Chase*, 165 Illinois 527, on the ground that it conferred judicial power upon the registrar. It is evident that in this country the initial registration of a title must be made in a court having jurisdiction to adjudicate on titles and to apply the law. The court must decree the title as it finds it, and must direct the registrar to register it according to the terms of the decree.

To cure the objection raised over the first law, a new one was framed and passed, and went into force on May 1, 1897.

In the case of *People v Simon*, 176 Illinois 165, the law was held constitutional. In this particular case the question was, "Does the act violate the constitution so far as to render it void, and therefore, furnish no justification for the exercises of the acts of the registrar?" The Court did not pass on the Indemnity Fund feature of the law, nor on the question whether, if the objections made against the act were sustained, they would necessarily invalidate the whole act, nor on other questions which were not directly involved in this case. The Court said, "It would be alike impracticable and unprofitable to attempt now to give a construction to every provision of this law". So, that the numerous questions which may be raised under the Torrens law concerning the constitutionality and construction of the different sections, are open questions, upon which no definite judicial construction can be secured until cases arise involving those particular points. A law may be constitutional as a whole, but unconstitutional in many of its parts, *Chicago v Reeves*, 220 Illinois 274.

The Torrens Law as introduced in the Illinois legislature was championed by the Chicago Real Estate Board. Mr. Sheldon, a lawyer, and a member of the Board, became very enthusiastic over the Torrens system on a tour of Europe some years before the law was passed. On his return to Chicago he could interest few, but after some years he interested the members, or at least some of them, in such a law for Illinois. They wished to have the law in Cook County so by diligent lobbying at Springfield secured its passage. On presenting the law for vote in Cook County it passed by a vote of 250,000 to 50,000. The 50,000 votes repre-

sented the property holders of the city of Chicago, and the 250,000 the floating population. Mr. Sheldon was made the first registrar. The County of Cook is the only county which has adopted the law.

A Digest of the Illinois Torrens Law

Be it enacted by the People of the State of Illinois, represented in the General Assembly --Recorders and ex-officio recorders of deeds in the several counties in this State shall be registrars of titles in their respective counties.

Bringing Land Under Act.

The owner of any estate or interest in land, whether legal or equitable, may apply in person or by an attorney in fact authorized to do so. A corporation may apply by its authorized agent, an infant by his natural or legal guardian any other person under disability by his legal guardian. The person in whose behalf the application is made shall be named as applicant.... The application shall be in writing, signed and sworn to by the applicant or the person acting in his behalf.... Any number of contiguous pieces of land in the same county, and owned by the same person, may be included in one application.

The application must substantially set forth the following in this form, with appropriate changes,-
(See Appendix A.)

The application may be made to any court having chancery jurisdiction in the County where the land is situated, such Court shall have power to inquire into the condition of the title to and any interest in the land, and any lien or incumbrance thereon, and to make all such orders, judgments and decrees as may be necessary to determine, establish and declare the title or interest, legal or equitable, as against all persons, known or unknown, and all liens and incumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed or otherwise, and to declare the order and preferences as between the same, and to remove clouds from the title, and for the purpose the said Court shall be always open, and such orders, judgments and decrees may be made and entered as well in vacation as in term time.

Upon the filing of the application in the office of the Clerk of the Court, the Clerk shall docket the same in a book to be kept for that purpose, which shall be known as the "Land Registration Docket". Immediately upon the filing of the application, an order may be entered referring the same to one of the examiners of title appointed by the registrar, who shall proceed to examine into the title and into the truth of the matter set forth in the application, and make report to the court the substance and his conclusions. He shall have power to administer oaths and examine witnesses, and may at any time, apply to the court for directions in any matter concerning his investigation. The examiner may receive in evidence any abstract of title, but the same shall not be held as more than prima facie evidence

of title, and any part or parts thereof may be contraverted by other competent proofs.

The issuing of summons, notice, publication and default are practically the same as in any other procedure. The law gives a section to each and deals with them plainly.

The Court shall in no case be bound by the report of an examiner of title, but may require other or further proof. The Court may, in any proceedings under this act, find and decree in whom the title to or any interest in the land is vested, remove clouds upon the title, and may order the registrar to register such title or interest, and generally may make any and all such orders and decrees as shall be according to equity in the premises.

The order or decree so made and entered shall, except as herein otherwise provided, be forever binding and conclusive upon all persons. whether mentioned by name in the petition or included in "All whom it may concern". Allowance of appeal is upon like terms as in other proceedings in chancery. Any person not actually served with process or notified of filing of application may within two years after entry appear and file his sworn answer. Upon filing of answer the court shall proceed to review the case and make such order in the case as shall be according to equity in the premises.

Registering the Title

Upon the filing of a certificate signed by the Clerk giving the effect of the order or decree of the court or of such order or decree in the registrar's office, the registrar shall proceed to register the title or interest pursuant to the terms of the

order or decree in the following manner: he shall make out a certificate of title which may, subject to such change as the case may require, be substantially as follows:

FIRST CERTIFICATE OF TITLE PURSUANT TO ORDER OF.....COURT OF
COUNTY.
 STATE OF ILLINOIS, } ss.
County }
of (residence, and if a minor give his age; if under other disability, state the nature of the disability) married to (name of husband or wife, or if not married say not married) is the owner of an estate in fee simple (or as the case may be) in the following land (here describe the premises) subject to the estates, easements, incumbrances and charges hereunder noted. (In case of trust, condition or limitation, say "in trust" or "upon condition" or "with limitation," as the case may be.)
 Witness my hand and official seal this (date).
 [SEAL.] Registrar.

The law explains the Registrar's books of entry, the making of a duplicate certificate of title for the owner, and means for preserving the owner's receipt.

Such certificate shall, until the expiration of the time herein limited to bring action or to contest the title of the registered owner, be in all courts and places prima facie evidence that the provisions of the law have been complied with and that such certificate of title has been issued in compliance with a valid order or decree, and that the title to the land is as therein stated, and after the expiration of such time shall be conclusive evidence of the same facts.

After land has been registered no title thereto adverse or in derogation to the title of the registered owner shall be acquired by any length of possession.

The bringing of land under this act shall imply an agreement which shall run with the land that the same shall be subject to the terms of the act and all amendments and alterations thereto. And all dealings with land or any estate or interest therein, after the same has been brought under this act, and all

liens, incumbrances and charges upon the same subsequent to the first registration thereof, shall be deemed to be subject to the terms of this act.

Transfer.

A registered owner of land desiring to transfer his whole estate or interest therein, or some distinct part of parcel thereof, or some undivided interest therein, may execute to the intended transferee a deed or instrument of conveyance in any form authorized by law for that purpose. And upon filing such deed or other instrument in the registrar's office and surrendering to the registrar the duplicate certificate of title, the registrar shall make out and register as hereinbefore provided a new certificate, and shall note upon the original the date of transfer, and stamp the word "canceled".

Mortgages, Leases and Other Charges

Every mortgage, lease for a term not exceeding ten years, contract to sell, and other instrument intended to create a lien, incumbrance or charge upon registered land or any interest therein, shall be deemed to be a charge thereon. On the filing of the instrument intended to create the charge in the registrar's office, and it appearing to the registrar that the person intending to create the charge has the title and right to create such charge, he shall enter upon the proper folium of the register, and also upon the owner's certificate a memorial of the purport thereof.

A release, discharge or surrender of a part or any part

thereof, or of any part of the land charged, may be effected in the same way as above provided in the case of a transfer. That is by the stamp on the instrument by the registrar of the word "canceled". The law provides for the assignment of charges and also for transmission of land by death of the owner. The law also provides for the registrar to keep tract indexes and alphabetical individual indices.

Indemnity Fund.

Upon the first bringing of land under the operation of this act, and upon the issuance of a certificate of title, and upon the entry of a new certificate, there shall be paid to the registrar one-tenth of one per cent of the value of such land. Such value shall be ascertained by the registrar. All sums of money as received shall be paid to the county treasurer for the purpose of an indemnity fund under the terms of this act. The said fund shall be invested only in the bonds or securities of the United States, or of this State, or counties or other municipalities of this State.

Any person sustaining loss or damage thru omission, mistake, and so forth, shall have a right of action for the damages thus sustained against the county and may file a claim with the county board, or bring an action at law against the county for the recovery of such damages. Said indemnity fund shall be held to satisfy judgments obtained or claims allowed against the county for losses or damages as aforesaid. County boards are hereby authorized and empowered to allow or reject claims in accordance with the practice as may by them be adopted. The

rejection of any claim so presented shall be no bar to the bringing of suit for the same in any court of competent jurisdiction. Upon the rendition of a judgment by a court of competent jurisdiction upon such claim, or upon the allowing of such claim by the county board, payment thereof shall only be made upon the order of such county board. Time in which to bring such action for compensation is limited to ten years from the time when the right to bring such action first accrued.

Penalty for false or fraudulent procurments is fixed at a fine not exceeding \$5,000 or imprisonment not exceeding five years, or both.

Fees

The fees to be paid to the registrar shall be as follows:

At or before the time of referring the application for initial registration, the applicant shall advance and pay to the registrar the sum of \$15, which shall be in full of all services of the registrar and examiners up to the granting of the certificate of title. When the application includes titles derived from more than one source an additional sum of \$5 for each source shall be advanced.

For granting certificate of title upon each application and registering the same - - - - - \$2.00

For registering each transfer, including the filing of all instruments connected therewith, and the issue and registration of the new certificate of title - - - - - \$3.00

When the land transferred is held upon any trust condition or limitation, an additional fee of .75 - - - - - \$5.00

For entry of each memorial on the register, including the filing of all instruments and papers connected therewith and endorsements upon duplicate certificates - - - - - --\$3.00

For filing copy of will with letters testamentary, or filing copy of letter of administration and entering memorial thereof - - - - - --\$5.00

For the cancellation of each memorial or charge - - - - 1.00

For each certificate showing condition of the register 1.00

For any certified copy of register or any instrument of writing on file in his office, the same fees now allowed by law to recorders of deeds for like services.

The act provides that upon petition the question of the adoption of this act shall be submitted to the voters at a regular election, and that a majority of the votes cast is sufficient to put the law in force and thereafter the act shall apply to the lands in that county.

General Discussion.

The law provides no method by which the registrar decides upon the valuations in levying the indemnity tax fund. The law merely says he shall ascertain the value. It has been figured that to encourage business, these valuations have been extremely low. The indemnity fund accumulates very slowly, and the conditions imposed are so numerous that it appears at best an imperfect remedy, and anything but prompt. After seventeen years in Cook County the indemnity fund amounted on September 1, 1912 to \$21,742.14.

The registrar's certificate makes no attempt to cover or

disclose the existence of easements, which are of great importance to owners of real property in Chicago, especially easements of way, or for light and air, or party wall agreements. The law does not require the Registrar to cover or give notice of any unpaid taxes or special assessments nor would any judgments or decrees in United States courts against the owner of registered land show in the Registrar's certificate, nor would such certificate protect against forgeries. Then again, there is the danger of non-servance and of undisclosed interests not served. One registered under the Torrens system there is no withdrawal. In the New York and Oregon acts withdrawal is allowed, but this is not true in the acts of Illinois, Massachusetts and Minnesota.

The amendment to the law in 1907 provided for the transferring of Torrens titles to heirs of deceased owners. The original act made no provisions in these cases.

No where in the United States is land registration under the Torrens system compulsory. Careful investigations fails to disclose in a single American State which has adopted the Torrens system a self supporting office. In Cook County it is estimated that the loss to tax payers has been at least \$200,000.

The County Commissioners in their appropriation bill for 1912 increased the office force from seventeen to twenty-two and asked for the sum of \$36,900 for salaries only, thus verifying the argument against Torrens that it is primarily controlled by politics. These salaries were distributed as follows,-

one attorney examiner	\$4,000
two attorney examiners	2,500
three clerks	1,800
eight clerks	1,500
three stenographers	,900
one investigator	1,500
one counter clerk	1,200
one typist	1,000
one messenger	,600

The office from June 1, 1911 to June 1, 1912 shows a loss of \$2,411.79 for the year on salaries alone.

Investors shun the Torrens titles, and capital considers registered titles poor security for loans. There is nothing which eats up money as rapidly as litigation over dead men's estates and litigation of any kind. An insurance company's mortgage expert said, that "a Torrens title meant an endless chain of litigation".

The recording and registration figures for the last ten years in Cook County are as follows:-

Year	Transfers	Torrens System
1903	26,639	309
1904	26,711	445
1905	28,940	748
1906	31,562	988
1907	30,472	1076
1908	29,321	1006
1909	32,821	1253
1910	37,730	1725

(Cont)

Year	Transfers	Torrens System
1911	37,615	2014
1912	42,425	2246

These figures show an increase in proportion which favors the Torrens system. But on investigation of the amount of property transferred by totalling the consideration of the instruments filed it appears that the greater part of the Torrens registration are lots of small value held by foreigners who allow their political and community boss to transact their business. The proportion, by amount of money involved is much less than the proportion by number of instruments.

To a layman, the transferring of real property by the same methods as personal property sounds like a reasonable, and good thing. Such was the idea of Sir Robert Torrens over 60 years ago, altho then the idea was not a new one. One of his main ideas was to avoid law suits and do away with the necessity of employing lawyers. Thus, the Americanized Torrens laws have defeated their own purpose in that they start with a law suit, and the ownership, transferring and encumbrancing of real property becomes a succession of legal proceedings under this reign.

To the average man there appears no reason why the Torrens system with its directness and simplicity should not be adopted. This explains why, when the proposition is voted on, the result is usually favorable. But, the truth is that those who vote for own no realty, yet they have a voice in shaping the land policies of the State.

The Torrens system has been an admirable field for the professional politicians . In many cases, regardless of party they have pushed the system for the simple reason that its adoption creates more public offices and thereby more positions for political workers.

Vice-President Marriott, of the Chicago Title and Trust Company said to the writer, "The Torrens law of land registration bothers us very little; we are content to let it run its course for outside of the many arguments against the system itself, it is nothing more than a political scheme hatched up by those who are jealous of a successful private business".

As to the Illinois Torrens law, which is in operation in Cook County only, an organization of real estate agents had their attorney prepare an exhaustive opinion as to its validity. The attorney was Vincent D. Wyman of the firm of Wyman and Jurgens, 139 North Clark Street, Chicago, and he prepared an elaborate treatise in a printed volume of eighty pages. He gives eleven specific reasons why a registered title cannot be safely accepted on the strength of the certificate alone, and nine specific reasons why the law must fail to operate in a manner to make effective the object of its framers, namely, the creation of a convenient, economical and safe method of land tenancy and transfer. A summary of this opinion can be found in Appendix, number B.

Conclusion

The question seems to be, how can we simplify our land titles? The answer is, of course, by simplifying our land laws. But how do that?

A commission of the City of New York made the following report. Although made some years ago it still is a wise report. "That by improvement of the present system, with which we are familiar and with the outgrowth of our institutions, our customs and our spirit, and not in its abandonment could anything be accomplished".

Mr. D. W. Olmsted in his book entitled, "Reforms in Land Transfer", says, "lastly, it is the best opinion of modern experts, that the use of the Torrens system in its chief features of formulary law, official control, judicial determination of titles on preliminary examinations with guarantee are fallacies; and that its adoption will prove to be only the substitution of a complex and unwieldy system for the simpler system of our present system which is made complex by the unnecessary provisions of existing laws which can be readily modified or changed. In short, improve the present system".

Because of the many unsettled questions connected with the Torrens system, it is doubtful if these questions could be settled favorably, so that they would provide for the purpose of the system - simplicity and convenience..

The great benefit and the desirable part of the Torrens system appears to be primary registration. This has been Americanized in the form of a bill to quiet title against all the world by personal service and publication. This could be improved

and perfected, with precautionary methods against its abuse and its insertion in all State laws would be a desirable feature. But, as the law now stands in most States the proceeding is very complicated, and in most of the laws withdrawal under Torrens is impossible. This could be easily remedied.

Uniformity would be a big step toward simplicity of laws.

Some suggested improvements in our land laws have been as follows,- shortening of our statute of limitations in reference to lands, simplifying of proceedings to quiet title, to foreclose mortgages, and to sell lands by guardians and administrators, testing and supervision of conveyancers, supervision and control of public platting, supervision of register of deeds' offices, supervision and control of the abstract work and offices, the providing of an administrative head of the Land Title System, as an officer or commission similar to a bank examiner, superintendent of education or tax commission.

At the Detroit Convention of the American Association of Title Men the following resolution was adopted, "The American system of land titles, notwithstanding some serious defects, is nevertheless, even as it stands, incomparably superior to every other land system that exists in the world today, or that ever has existed at any time in the past".

This is a very strong statement and possibly is not justified and would at best be hard to prove, but it admits that there are defects which are ⁱⁿ need of remedy, and it appears that this remedy must come in some form at an early date.

Appendix A.

FORM OF APPLICATION FOR INITIAL REGISTRATION OF TITLE TO LAND.

To the Judge of the.....Court of.....County, Illinois, in Chancery sitting:

STATE OF ILLINOIS, }
County of..... } ss.

I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge and belief.

(1st.) Name of applicant..... Age.....years. Residence.....No. street or township. Married to.....Name husband or wife. Residence.....No. street or township.

(2d.) Application made by.....acting as.....Owner, agent or attorney..... Residence.....No. street or township.....

(3d.) Description of real estate is as follows:.....estate or interest therein is..... and.....subject to homestead.

(4th.) The land is.....occupied by.....Names of occupants whose address is..... No. street or township and address..... The estate, interest or claim of..... occupant is.....

(5th.) Liens and incumbrances on the land..... Name of holder or owner thereof..... Post office address..... Amount of claim \$..... Recorded, Book.....Page.....

(6th.) Other person..., firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder [reversion], or expectancy in said land are..... Address..... Character of estate, interest or claim is.....

(7th.) Other facts connected with said land are.....

(8th.) Therefore the applicant prays the Court to find and declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same, and to grant such other and further relief as shall be according to equity.

.....Applicant signature.....

By.....Agent, Att'y, Adm'r, or Guard....

Subscribed and sworn to before me by the above named.....as.....Owner, Att'y or Agent, this.....day of....., A. D. 18.....

I hereby assent to the registration of the above described real estate as prayed for by..... who is my.....Husband or wife.

.....Husband or wife's signature.....

STATE OF ILLINOIS, }
County of..... } ss.

I.....a.....in and for said County in the State aforesaid,

Do HEREBY CERTIFY that.....personally known to me to be the same person whose name is subscribed to the foregoing assent, appeared before me this day in person and acknowledged the said assent as.....free and voluntary act for the uses and purposes therein set forth.

Given under my hand and.....seal, this.....day of.....A. D. 18....

Appendix B.

FIRST. *A registered title cannot safely be accepted on the strength of the certificate alone:*

- (a) Because the chain of title anterior to the registration proceedings may disclose contingent interests in unborn persons, which interests the court was powerless to bind.
- (b) Because necessary parties disclosed by the records or in possession may not have been made defendants by name to the initial registration proceedings, or
- (c) Because necessary parties made defendants thereto may not have been properly served with process; resulting in a decree void as to them.
- (d) Because as to parties in full possession of the interests claimed by them and also as to parties having only rights of action not ripe for immediate suit, the two-year limitation cannot operate.
- (e) Because the certificate fails to protect the purchaser against
 - (e-1) Leases to parties in possession, for not more than five years, whether registered or unregistered;
 - (e-2) Public highways.
 - (e-3) All rights of way, or other easements, whether for air, passage, light, party-wall, etc.
 - (e-4) Taxes and special assessments for which sale has not been had.
 - (e-5) Tax sales occurring within three months.
 - (e-6) Rights of appeal, writ of error, to appear and contest, to file counter-claim, etc., within two years.
 - (e-7) Fraud in certain cases.
- (f) Because the certificate itself is only prima facie evidence, and not conclusive, its validity depending upon anterior proceedings.
- (g) Because the validity of the sections granting the registrar powers, of a judicial nature, to construe trusts, limitations, etc., is still an open question.
- (i) Because Torrens certificates are subject to equity proceedings, and probably also attachment and other proceedings at law, pending in the United States Courts, although no *lis pendens* notice, as required by the Torrens law, has been filed in the Registrar's office.
- (j) Because the question of the necessity of filing transcript of order of adjudication or of approval of trustee's bond, in bankruptcy proceedings, in order to bind purchaser of registered property with notice, is still unsettled.
- (k) Because judgments and decrees of the United States Courts within Cook County (and perhaps also of the Supreme and Appellate Courts of this State) are liens on registered property, though no transcripts or certificates thereof be filed or noted on the Torrens register.
- (l) Because in case of appeal or vacating of judgment or decree, after issuance by the clerk of a certificate of dismissal, or other disposition and cancellation of notice of the proceeding in question, the registered property is still bound by the subsequent proceedings, although the register shows otherwise.

(see next page)

Only by a search of the title, such as is evidenced customarily by an abstract, can it be determined that the title represented by a Torrens certificate actually exists as stated therein.

SECOND. The law affords no protection to immediate or remote grantees of registered land under forged or undelivered deeds, or under deeds from idiots, insane persons and other incompetents mentioned in Section 14 of the Act on Lunatics, etc. Nor against dower or homestead rights not properly released.

THIRD. Of importance upon the question of the practical application of the system under the present law, it may be noted:

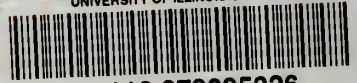
- (a) Certain estates cannot be registered.
- (b) The necessity of making defendant all parties having or appearing to claim any interest may result in arousing controversy over the title where none otherwise would have arisen.
- (c) The disadvantage, or impracticability, of obtaining names of unknown parties, as, for instance, the holders of mortgage notes, it being customary for loan brokers to withhold such information in order that their investors may not be annoyed, or their identity disclosed to the mortgagor, other brokers, or the public.
- (d) The applicant is not only required to make proof of a *prima facie* title, as in ejectment, partition, or on a bill to quiet title, but also to prove title good as against all the world.
- (e) An abstract of title being necessary in order to show good the title evidenced by the certificate, there is no saving in expense of transfer of registered land, but rather an increase.
- (f) Upon the death of a registered owner his estate must bear the burden, in addition to probate, of one or more chancery proceedings in the Circuit Court for transfer of the title, and must also pay an additional per cent. of its value into the indemnity fund.
- (g) In contested cases, the initial registration proceeding cannot be heard in open court, but must be heard in the first instance before the Examiner, in whose favor additional fees to a large amount may be taxed.
- (h) The limited amount in the indemnity fund; the fact that a right of action against it is not barred for ten years; the limited number of cases in which a person losing title through operation of the system might have recourse against it; the invalidity of the provision for county liability; the circuitous procedure required to obtain compensation for a claimant who has a legal claim against the fund, viz., the recommendation of the registrar, action and appropriation by the county board, or a suit for damages, point, without further elaboration, to the absence of that financial responsibility and unquestionable security which investors and dealers in realty have, through long custom and for their own safety, grown to demand.
- (i) The unconstitutionality of the compulsory registration amendment is indicative, in view of the history of Torrens registration in England, that it will be many generations before it can reasonably be expected that the system, even with liberal amendment curing many of the present defects of the law, may come into general use.
- (j) The absence of any provision in the law for a copy of plat of the premises accompanying the certificate, in order to show location, dimensions, etc., is the subject of common objection.

Respectfully,

VINCENT D. WYMAN.



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